***THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION Nos. 8537 and 15529 of 1994

% 15-6-2005

Andhra Pradesh Beedi Workers Union,

Nizamabad, represented by its General Secretary,

PETITIONER

VS.

$ The Management of Sable Waghire and Co.,

Beedi Manufacturers, Nizamabad

RESPONDENT

! Counsel for the Petitioner: MR.G.VIDYASAGAR

^ Counsel for the Respondent : Sri A.K.Jayaprakash Rao

< Gist:

> Head Note:

? CITATIONS:

1. 2005 LLR 275

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 8537 of 1994

Between:

Andhra Pradesh Beedi Workers Union,

Nizamabad, represented by its General Secretary,

V.Krishna S/o Mallaiah

..... PETITIONER

AND

1. The Labour Court – II, A.P.

Hyderabad, rep. By its Presiding Officer

2. The Management of Sable Waghire and Co.,

Beedi Manufacturers, Nizamabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or Writ, particularly one in the nature of Writ of Certiorari, and after calling for records from the 1st respondent quash the Award on the file of the Labour Court-II, Hyderabad in I.D.No.56 of 1992 dated 24-1-1994 in so far it relates to the denial of back wages is concerned and consequently direct the 2nd respondent management to pay the back wages to the workmen concerned from the date of termination, 17-4-1981 till date of reinstatement.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the respondent No:1 : None

Counsel for the Respondent No.2: Sri A.K.Jayaprakash Rao

WRIT PETITION NO : 15529 of 1994

Between:

The Management of Sable Waghire & Company Ltd Nizamabad, Rep. by its Power of Attorney Holder
Sri Sambaji Thanappa Wagmode, S/o. Thanappa, aged about 60 years, occ: G.P.A. Holder,
R/o. Nizamabad.

..... PETITIONER

AND

1 The Labour Court-II at Hyderabad Rep. by its Presiding Officer
"Chandra Vihar Buildings", 4th Floor, M.J. Road, Hyderabad.
2 A.P. Beedi Workers Union Rep. by its General Secretary V. Krishna
S/o. not known, Sramik Bhavan, Kodgalli, Nizamabad.
3 The Government of Andhra Pradesh Rep. by its Principal Secretary to Govt., Labour Employment, Nutrition & Technical Edn. (Lab.II) Deptt., A.P. Secretariat, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to call for the records from the 1st respondent and issue a writ, order or direction particularly one in the nature of writ of certiorari and quash the award passed by the 1st respondent in I.D.No. 556/92 (old I.D.NO. 128/83), dated 24-1-1994, published on 5-3-1994 holding the same as illegal, unjust, contrary to law and perverse and pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.2: Sri G.Vidyasagar

Counsel for respondents 1 & 3 : G.P. for Social Welfare and

G.P. for Labour

The Court made the following :

COMMON JUDGMENT:

Writ Petition No.8537 of 1994 is filed by The Andhra Pradesh Beedi Workers Union, Nizamabad represented by its General Secretary, challenging the validity of the award of the Labour Court II, Hyderabad in I.D.No.556 of 1992 (Old I.D.No.128/83) dated 24-1-1994 in so far as it relates to denial of back wages and for a consequential direction to the respondent management of Sable Waghire and Company Beedi Manufacturers to pay back wages to the workmen concerned from the date of their termination i.e, 17-4-1981 till the date of their reinstatement.

W.P.No.15529 of 1994 is filed by the management of Sable Waghire & Company Limited challenging the validity of the award of the Labour Court II in I.D.No.556 of 1992 dated 24-1-1994 (Old I.D.No.128/83) published in the Gazette of 5-3-1994 as illegal, unjust and contrary to law.

Since both the writ petitions have been filed challenging the very same award of the Labour Court II, Hyderabad in I.D.No.556/92 dated 24-4-1994, both the writ petitions are disposed of by a common judgment.

The Government of Andhra Pradesh in exercise of its powers under Section 10 (1)© of the Industrial Disputes Act, 1947 made the following reference for adjudication:

1. Whether the termination of services of the following Beedi packers by the management of Sable Waghire & Co Beedi Manufacturers, Nizamabad is justified?

   (1) Sri Shaik Bunshee, s/o Shaik Khaja, 2. Sri Devanna S/o Gallappa, 3. Sri Sk.Madar S/o Suleman , 4. Sri Ahmed S/o Suleman, 5. Sri Yousuf Khan S/o Myder Khan, 6. Sri Hyder Khan S/o. Dawood Khan, 7. Sri Mahbout, S/o Hyder Ali, 8. Sri S.K.Iman, S/o Moinuddin, 9. Sri Babjarri S/o Moulasab, 10. Sri S.Gangadhar S/o G Gangaram 11. Sri Reddypet Gangadhar S/o Chunnaiah, 14. Sri Laxman, S/o Sayanna, 15. Sri D.Narayana S/o Yellaiah, 16. Achcha Kistaiah, 17. Sri Swamy S/o Kistaiah, 18. Ch.Tirupati S/o Anjaiah 19. E.Rajender S/o. Rajaiah.

   (2) If not, to what relief the workmen are entitled to?

The facts, as averred in the pleadings of both the parties are that these nineteen

workmen were working as packers in Sable Waghire and Company (herein referred to as the 'respondent-company'). It is the case of these workmen that they were regular workers, some of whom had put in more than 20 years of service. During 1981, on a strike call given by all the Beedi Workers Unions, the workmen in the respondent-company also struck work from 11-3-1981 to 17-4-1981, when it was called off. It is the case of these workmen that when they went to the factory to resume duty, the respondent company did not allow them to work, that their services were terminated without holding any domestic enquiry and that the respondent had also resorted to unfair trade practice by taking some of the workmen to work while declining to take the 19 workmen back into service.

It is the case of the respondent – company that while the Beedi workers went on strike on 11-3-1981 immediately after giving notice, the strike was declared as illegal by the Government on 10-4-1981. On the management issuing notices to the Beedi workers and the unions on 10-4-1981, while some of the workers joined duty, these nineteen workmen did not choose to join duty. The matter went up to conciliation and after several sittings of conciliation, the Conciliation Officer submitted a failure report on 2-10-1981. The Government initially refused to make a reference but after a lapse of one year nine months, the dispute was referred for adjudication before the Labour Court. It is the case of the respondent – company that it did not adopt any discriminatory tactics and on the other hand these workmen voluntarily abstained from duty. It is the case of the respondent company that the reference itself is illegal and is liable to be rejected.

On behalf of the workmen, six witnesses were examined and Exs.W-1 to W-13 were marked as exhibits. On behalf of the respondent- company, one witness was examined and Exs.M-1 to M-31 were marked as exhibits. The Labour Court found that there was nothing illegal in the Government making the reference and disbelieved the contention of the respondent that while the management was willing to take these employees back into service it was the workmen who did not choose to join duty. The Labour Court held that if this contention of the respondent was accepted, there was no reason for the workmen to approach the Conciliation Officer. The Labour held that the Beedi employees were casual labour and lowly paid employees and unless they work day to day, they could not meet both ends. As such, the Labour Court held that the case of the respondent, that they were willing to take the workmen into service, was not correct. The Labour Court held that it is

evident that the management has not taken back the workmen into service even though the strike was called off and the workmen reported for duty, which amounted to termination of their services and such termination without a domestic enquiry being held, was invalid and illegal. The Labour Court while taking note of the fact that workmen at Sl.Nos.8 to 11 and 17 were in service and that the respondent had taken back some of the workmen into service , held that at what point of time they were taken back into service was not known. The labour Court directed reinstatement of these workmen into service with all benefits but without back wages.

Sri A.K.Jayaprakash Rao, learned counsel for the respondent-company submits that the workmen, as early as on 27-12-1985, had received payment as per the mutual settlement arrived at between the management and the union in full settlement of their claims and in fact had agreed to withdraw the industrial dispute before the Labour Court. He refers to Exs.M-12 to Ex.M-21 in this regard. It is his case that despite these documents having been marked as exhibits, the Labour Court did not chose to consider these documents and failed to record its findings thereon.

The jurisdiction of the High Court in Certiorari proceedings is supervisory. While the findings of fact reached by Labour Courts/Tribunals, as a result of appreciation of evidence, cannot be re-examined or re-appreciated, errors apparent on the fact of the record can be corrected. The fact that the Labour Court failed to consider relevant material and to record its findings thereon is an error committed by it, which undoubtedly requires interference. Labour Courts/Tribunals are duty bound to consider all the relevant material on record and give their finding thereon. Since the relevant material (Exs.M12 to M-21) relied upon by the respondent-management was not examined/considered by the Labour Court, nor did the Labour Court choose to give its findings thereon, the matter has necessarily to be remanded to the Labour Court for its appreciation of these documents and to record its findings thereon. It is no doubt unfortunate that the award passed in January, 1994 and which is pending on the file of this Court for more than 11 years is now required to be remanded. The fact, however, remains that while exercising its Certiorari jurisdiction this Court does not act as a Court of appeal or appreciate/re-appreciate the evidence on record. The function of appreciation of the evidence on record and to record its findings thereon, is that of the Labour Court/Industrial Tribunals, and not the High Court under Article

226 of the Constitution of India.

Sri G.Vidyasagar, learned counsel appearing for the workmen also points out that having held that the termination is illegal and directing reinstatement of the workmen, the Labour Court committed a serious error of law in denying them back wages. Sri A.K.Jaya Prakash Rao, learned counsel for the respondent – company, on the other hand contends that since the workmen had not let in evidence before the Labour Court in this regard, the Labour Court was justified in denying them back wages. He relies on a judgment of the Supreme Court in **KENDRIYA VIDYALAYA SANGATHAN v. S.C.SHARMA** in support of his contention.

Needless to state that when the Labour Court declares termination of services of a workman to be illegal and directs reinstatement, full back wages is the norm and denial thereof an exception. The Labour Court is bound to assign reasons in case it chooses to deny back wages. The Labour Court having chosen not to do so in the impugned proceedings, the award to the extent of denial of back wages is liable to be set aside. Since, however, the entire matter is now being remanded for consideration of the Tribunal, it is open to both the parties, to let in evidence/further evidence, if they so choose to, including on the aspect as to whether these workmen were gainfully employed or not. The dispute in I.D.556/92 (old I.D.128/83) has been pending for more than two decades and as such requires adjudication on a priority basis. Liberty given to both the parties to adduce further evidence cannot be permitted to result in the proceedings before the Labour Court being dragged on inordinately. The Labour Court is therefore directed to dispose of the matter, as expeditiously as possible, not later than three months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of.

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15-06-2005

ASP

To

1. The Presiding Officer, Labour Court - II

2. The Principal Secretary to Govt., Govt. of A.P.
Labour Employment, Nutrition & Technical Edn. (Lab.II) Deptt., A.P. Secretariat, Hyderabad.

3.Two C.Cs. each to the G.P. for Social Welfare and the G.P. for Labour, High Court Buildings (OUT)

4. One Fair copy to the Hon'ble Sri Justice Ramesh Ranganathan (for his Lordship's kind perusal)

5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High Court, Buildings, Hyderabad.

7. Two C.D. copies